

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF OKLAHOMA**

1. GREAT LAKES INSURANCE SE,)
vs. Plaintiff,)) Case No. CIV-22-00702-JD
vs.)) Judge Jodi W. Dishman
vs.)
2. FREDY VALLE d/b/a VALLE)
TRUCKING;)
3. SILVER STAR CONSTRUCTION)
COMPANY, INC.;)
4. TYLON MACKEY;)
5. ISRAEL JUAREZ;)
6. ORD TRUCKING, INC.)
7. ZURICH AMERICAN INS. CO.,)
Defendants,)

8. ZURICH AMERICAN INS. CO.,)
vs. Defendant/Third Party)
Plaintiff,)
vs.)
9. PROGRESSIVE NORTHERN INS.)
CO.,)
Third-Party Defendant.)

**DEFENDANT/THIRD-PARTY PLAINTIFF ZURICH AMERICAN INSURANCE
COMPANY'S MOTION TO STRIKE SETTLEMENT CONFERENCE
SCHEDULED ON JANUARY 5, 2024**

Defendant/Third-Party Plaintiff, Zurich American Insurance Company (“ZAIC”) respectfully submits its Motion to Strike Settlement Conference Scheduled on January 5, 2024 (“**Motion**”). In support of its Motion, ZAIC states as follows:

1. Pursuant to the Court’s Settlement Conference Order (Doc. 84) filed on October 3, 2023, *a Settlement Conference is scheduled in this action on Friday, January 5, 2024 at 1:30 p.m.* before the Honorable Suzanne Mitchell, United States Magistrate Judge for the United States District Court, Western District of Oklahoma. Pursuant to the Settlement Conference Order, *the parties are to submit Settlement Conference Statements on or before Friday, December 29, 2023 at 5:00 p.m.*
2. This case arises out of an underlying lawsuit relating to a motor vehicle accident (“**Accident**”) which occurred on September 4, 2019 in Payne County, Oklahoma, involving Israel Juarez (“**Juarez**”) and then-twenty-year-old Tylon Mackey (“**Mackey**”). At the time of the Accident, Juarez was operating a dump truck owned by ORD Trucking, Inc. (“**ORD**”). Mackey, who was driving a motorcycle, sustained catastrophic injuries, including a traumatic brain injury which will necessitate life-long, twenty-four hour care.¹ Mackey filed a lawsuit in the District Court of Payne County, Oklahoma on July 8, 2020, styled as *Tylon Mackey v. Israel Juarez, ORD Trucking, Inc., Fredy N. Valle Sr. d/b/a Valle Trucking, and Silver Star Construction Company, Inc.*, Payne County Case No. CJ-2020-233 (“**Underlying Suit**”). At the time of the Accident, ORD had been hired by and was transporting materials for Fredy N.

¹ According to discovery in the Underlying Suit, Mackey cannot speak or perform without assistance activities of daily living such as feeding, clothing, or performing personal hygiene without assistance, and that he is 100% disabled and is dependent upon others to complete any task.

Valle, Sr. d/b/a Valle Trucking (“**Valle**”). Valle had engaged ORD’s services to haul materials to fulfill Valle’s contractual obligations with another entity, Silver Star Construction Company, Inc. (“**Silver Star**”) pursuant to a Hauling Services Agreement (“**HSA**”) entered into by Valle and Silver Star. As part of its obligations under the HSA, Valle had listed Silver Star on Certificates of Insurance Valle obtained from its insurers, Great Lakes Insurance SE (“**Great Lakes**”) and Progressive Northern Insurance Company (“**Progressive**”). At the time of the Accident, Silver Star also had in effect an insurance policy issued by ZAIC.

3. ZAIC, Great Lakes, and Progressive have filed various Motions for Summary Judgment in the instant action, which will be fully briefed and ripe for decision after the filing of reply briefs on December 19, 2023.

4. A Scheduling Order has been entered in the Underlying Suit, which sets a discovery and dispositive motion deadline of April 30, 2024. No pretrial conference date is set in the Underlying Suit, but a disposition docket date is set for May 2, 2024, where parties are expected to announce whether they are ready for trial.

5. Silver Star, ZAIC’s insured, has advised of its intention, after conducting some additional depositions in the Underlying Suit, to file a Motion for Summary Judgment in the Underlying Suit. This motion will be filed on or before the Payne County District Court’s Scheduling Order deadline of April 30, 2024. The motion will dispute liability of Silver Star for the subject automobile accident.

6. Pursuant to Local Rule LCvR16.2(e), and Paragraph 2(B)(4) of the Court’s Settlement Conference Order, ZAIC’s counsel has conferred with counsel for the parties who have entered an appearance in this case (including counsel for Mackey, Great Lakes,

Progressive, and Silver Star)² as to the impediments to settlement from ZAIC's perspective that are occasioned by the current lack of any determination as to Silver Star's liability for the subject underlying automobile accident, and the holding of a Settlement Conference in this case appears to be a futile act until such time as the Payne County District Court has ruled upon the Silver Star's yet-to-be-filed motion for summary judgment.

7. Counsel is sensitive to the Court's busy schedule and judicial resources, and does not wish to dedicate those resources to a settlement conference that, under the circumstances, will be unfruitful in light of the procedural status of the Underlying Suit and how that procedural status relates to ZAIC's participation in settlement discussions.

8. Once a determination has been made in the Underlying Suit regarding the liability, if any, of ZAIC's insured, a settlement conference may be requested by the parties.

9. No previous motions for striking or continuing a settlement conference have been made by any party in this case.

10. The undersigned has conferred with counsel for Mackey, Progressive, Great Lakes, and Silver Star, and counsel for Mackey, Progressive, and Silver Star do not oppose the striking of the Settlement Conference under these circumstances. However, Progressive's counsel has asked the undersigned to advise the Court that paragraph 2 is ZAIC's version of the facts and touches on matters in dispute. As of the time of filing this Motion, Great Lakes' counsel has not been able to confirm whether Great Lakes objects to the relief requested herein.

² Defendants Juarez and ORD were dismissed from this action on July 26, 2023 (Doc. 61).

11. ZAIC submits that the striking of the Settlement Conference will impact the remaining deadlines of the Court's Scheduling Order, as a continuance of the settlement conference until such time as the Payne County District Court rules upon Silver Star's Motion for Summary Judgment will necessarily require the postponement of the settlement conference until sometime after April 30, 2024, the dispositive motion deadline in the Underlying Suit. To this end, ZAIC intends to file a motion requesting that the Court stay this action pending the outcome of dispositive motions in the underlying lawsuit, as a determination of any duty to indemnify Silver Star by ZAIC, Great Lakes, or Progressive will necessarily require a determination of facts as to whether Silver Star may be liable for the underlying automobile accident.

12. A proposed Order is submitted herewith for the Court's consideration.

WHEREFORE, Defendant/Third-Party Plaintiff Zurich American Insurance Company respectfully requests an Order from the Court: (1) striking the Settlement Conference currently scheduled for January 5, 2024 at 1:30 p.m. before the Honorable United States Magistrate Judge Suzanne Mitchell, and (2) for any other relief to which the Court may deem Zurich American Insurance Company entitled.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I, Amy E. Hampton, hereby certify that on this 21st day of December, 2023, a true and correct copy of the foregoing document was served upon the following via the Court's electronic notification system:

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